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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C6

[redacted]

FILE: [redacted] Office: OMAHA, NEBRASKA Date: MAR 28 2011

IN RE: [redacted]

PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Omaha, Nebraska, denied the special immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 19-year-old native and citizen of Honduras who seeks classification as a special immigrant juvenile (SIJ) pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4).

The director determined that the petitioner failed to meet the eligibility requirements for SIJ classification, and denied the petition accordingly. On appeal, the petitioner contends through counsel that he is eligible for SIJ classification under section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J), as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008).

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was considered in rendering a decision on the appeal.

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act. The TVPRA, enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *See* section 235(d) of the TVPRA; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter *TVPRA – SIJ Provisions Memo*). The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

Section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA, describes a "special immigrant" as:

> an immigrant who is present in the United States—
>
> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
>
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

The regulations define a "juvenile court" as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a) (1993).

The TVPRA amended the SIJ definition by expanding the group of aliens eligible for SIJ classification to include aliens who have been placed under the custody of "an individual or entity appointed by a State or juvenile court." TVPRA section 235(d)(1)(A). The TVPRA also removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law. *See id.*[1]

Additionally, the TVPRA modified the two forms of consent—formerly "express" consent and "specific" consent—required for SIJ petitions. First, instead of "expressly consent[ing] to the dependency order serving as a precondition to the grant of special immigrant juvenile status," the new definition requires the Secretary of Homeland Security, through the USCIS Field Office Director, to "consent[] to the grant of special immigrant juvenile status." TVPRA section 235(d)(1)(B). This consent determination "is an acknowledgement that the request for SIJ classification is bona fide," *TVPRA – SIJ Provisions Memo* at 3, meaning that neither the dependency order nor the best interest determination was "sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect," H.R. Rep. No. 105-405 at 130 (1997); *see also* Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*). "An approval of an SIJ petition itself shall be evidence of the Secretary's consent." *TVPRA – SIJ Provisions Memo* at 3. Second, the TVPRA transferred the "specific consent" function, which applies to certain juveniles in federal custody, from the Secretary of Homeland Security, as previously delegated to

[1] U.S. Citizenship and Immigration Services (USCIS) has long defined "eligible for long-term foster care" to mean "that a determination has been made by the juvenile court that family reunification is no longer a viable option." *See* 8 C.F.R. § 204.11(a) (1993).

U.S. Immigration and Customs Enforcement, to the Secretary of Health and Human Services. TVPRA section 235(d)(1)(B).

The record reflects that the petitioner was born in Honduras on April 10, 1991. The petitioner arrived in the United States without being admitted or paroled on May 4, 2008. He was apprehended by the border patrol, and served with a Notice to Appear for removal proceedings. An immigration judge administratively closed the petitioner's removal proceedings on November 2, 2010.

On April 30, 2009, the County Court of Hall County, Nebraska issued letters of temporary guardianship appointing Claudia and Jose Aguilar as temporary guardians of the petitioner. *See Letters of Temporary Guardianship*, dated Apr. 30, 2009. The court made the following pertinent findings:

> 1. That the minor child is under 21 years of age and unmarried;
> 2. The minor child may be eligible for long term foster care as defined in section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. Section 1101(a)(27)(J) and 8 C.F.R. Section 204.11(v)(2)(ii);
> 3. The minor child's country of origin is Honduras based upon the actions of the temporary Guardians, it would not be in the best interest of the minor child to be returned to Honduras;
> 4. It is in the best interest of the minor child to remain in the United States; and
> 5. It would be in the best interests of the minor child to remain in the care and custody of the temporary guardians and remain living in their authority.

Id. The petitioner filed his Petition for Special Immigrant (Form I-360) with USCIS on December 17, 2009, when he was 18 years old. The director denied the petition on January 28, 2011, and the petitioner timely appealed.

Here, contrary to the director's decision, the petitioner satisfied several requirements for SIJ classification. First, because the County Court of Hall County, Nebraska had jurisdiction to order the appointment of a guardian for the petitioner under section 30-2608 of the Nebraska Revised Statutes, the director erred in determining that the petitioner's guardianship order was not issued by a juvenile court. Second, because the Act provides that a special immigrant juvenile refers to an individual "who has been . . . placed under the custody of . . . an individual or entity appointed by a State or juvenile court located in the United States," the juvenile court's order of temporary guardianship satisfies section 101(a)(27)(J)(i) of the Act.

However, the juvenile court did not make a finding that the petitioner's reunification with one or both of his parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," as required by section 101(a)(27)(J)(i) of the Act. Although the temporary guardianship order indicated that the petitioner "*may* be eligible for long term foster care as defined" by the Act and the regulation, *see Letters of Temporary Guardianship*, (emphasis added), the court did not make the requisite determination that family reunification was not viable. Further, the record contains no evidence to support a finding of abuse, neglect or abandonment. Although counsel states that the petitioner's solo and difficult journey to the

United States must have been "to escape abuse, neglect or abandonment by his parents," *Brief on Appeal* at 5, the juvenile court made no such finding. Accordingly, the petitioner has not met his burden of showing eligibility for SIJ classification.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.